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SUBJECT: BUSINESSWOMAN VS CORRUPT DRUG AGENTS

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¶1. (SBU) Summary: Post Resident Legal Advisor (RLA) recently met with Yana Yakovleva, financial director of Sofeks Chemical Company. Yakovleva and her business partner were the subjects of an extortion attempt by the Federal Service for Narcotics Control (FSKN). When they refused, they were charged with distributing diethyl ether (not a crime under Russian law) and held in jail for seven months. They were finally released when prosecutors were forced to concede that they had not committed any crime. Upon release, Yakovleva formed Business Solidarity, an alliance of approximately 100 Russian businesses dedicated to fighting official corruption and extortion of businesses. Her case provides fascinating insight into how law enforcement extorts businesses and how businesses are trying to protect themselves. It also provides an opportunity for USG to support a civic initiative against corruption. End Summary.

THE CASE OF THE CHEMISTS

¶2. (SBU) Yakovleva explained that she started Sofeks in Moscow in the early 1990Qs, after graduating from college. Sofeks' main business was the importation and re-sale of chemical solvents. For years it operated successfully, without any problems. But in 2004, Yakovleva and her partner Aleksei Protskii were approached by FSKN agents, who proposed partnering in a scheme where FSKN would provide the protection in return for splitting the profits. At first, Yakovleva thought it was a joke, but quickly realized that it was a crude attempt to extort Sofeks and dismissed the agents.

¶3. (SBU) Shortly thereafter, the agents officially opened a criminal case against Yakovleva and Protskii for illegal distribution of diethyl ether, a chemical solvent which Sofeks purchased from a French producer and re-sold to various Russian purchasers. In July 2006, Yakovleva and Protskii were charged under Article 234 of the Russian Criminal Code, which criminalizes trafficking in so-called virulent (*silnodyestvuyushchiye*) substances. Because Article 234 does not define the word virulent or designate the substances to be considered Qvirulent,Q it is an open invitation to abuse. In charging Protskii and Yakovleva, the FSKN relied on a list which was prepared by an unofficial organization called the Standing Committee on Narcotics Control which, it was later determined, did not even have the legal authority to classify virulent substances. (In June 2006, the Russian Supreme Court issued a ruling holding Article 234 unconstitutional given the absence of any legal definition of the term virulent. This ruling, however, did not stop application of the law. In 2006, over 1,000 people were convicted under Article 234 and in the first six months of 2007, over 600 were convicted.)

¶4. (SBU) Upon being charged, Yakovleva and Protskii were arrested

and denied bail. During court hearings, which began in October 2006, their lawyer presented evidence that FSKN forensic analysis had been fabricated and argued that, in the light of the wording of Article 234 and the Supreme Court's June 2006 decision, distribution of diethyl ether was not a crime. At the same time, the case, which became popularly known as the Case of the Chemists (Dyelo Khimikov) became a cause celebre. Yakovleva's and Protskii's supporters mounted an aggressive public relations campaign, which included calls for their release by several Duma deputies, Human Rights Ombudsman Lukin, the Moscow Helsinki Group, and approximately 100 other chemical companies. In February 2007, the Perovskii District Court returned the case to prosecutors to correct what the court termed errors in the indictment. Prosecutors then decided to drop the case.

¶ 15. (SBU) After her release, Yakovleva continued to fight against abuse of Article 234. As a result of her agitation, in April 2007, the Public Chamber reviewed the Sofeks case, called on the Moscow City Prosecutor's Office to pursue a criminal investigation of the FSKN agents responsible for it, and also called for repeal of Article 234. In August 2007, in response to a request by Sofeks' lawyer, the Ministry of Health and Social Development issued a statement confirming that the Standing Committee on Narcotics Control is not legally authorized to designate substances as QvirulentQ under Article 234. In November 2007, the Duma formally amended Article 234 to require that lists of virulent substances be officially approved by the Russian government before they can obtain the force of law. (Despite this amendment, the law still does not provide a definition of virulent. Nor does it specify by what criteria the list should be compiled. In December 2007, the government refused to approve a draft list prepared by the FSKN and, as far as we are aware, no legally binding list exists.)

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¶ 16. (SBU) In September 2007, Yakovleva started Business Solidarity, an NGO dedicated to protecting businesses against abuse by law enforcement. It purports to represent 91 businesses committed to protecting each member business from illegal attack. In June, Business Solidarity presented President Medvedev with a proposed anti-corruption program. The main provision of the proposal is a moratorium on pre-trial detention in cases involving non-violent crimes where other means of pre-trial restraint, such as bail, are available. Yakovleva explained that this is a priority because the threat of detention is the main means by which law enforcement extorts business. Even if a criminal case is clearly fabricated and falls apart in court, she said, the simple fact of being held for several months pending trial can easily destroy a person's business.

In order to ensure that a subject will be detained, Yakovleva said, investigators often deliberately send a notice to appear for an investigative interview to the wrong address. When the subject fails to appear, he is declared a fugitive, which provides a strong basis for detention when he is finally captured.

¶ 17. (SBU) Other planks of the proposed anti-corruption program include a moratorium on supervisory inspections (proverki) of small and medium sized businesses; a zero tax for start up businesses; reduction in the number of government inspectors; salary increases for government inspectors; regular public hearings at which businesses can express their concerns about government regulation; expert review of existing regulatory and criminal legislation and development of a federal law on the defense of entrepreneurs. In addition to these proposals, the organization has also created a website, himdeleno.com, with an electronic hotline where entrepreneurs can report abuse and extortion by law enforcement.

COMMENT

¶ 18. (SBU) Initiatives like Business Solidarity provide an ideal opportunity for USG to support the rule of law and combat corruption. In order to help her formulate proposals on reform of pre-trial detention, RLA provided Yakovleva with relevant US legislation and judicial decisions. We will continue to explore other ways to support this and similar campaigns.

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